Title: Transposition into UK regulations of the new EU Procurement Directive on Concession Contracts **IA No:** CO 1020 **Lead department or agency:** Cabinet Office **Other departments or agencies:** Department for Business Innovation and Skills	**Impact Assessment (IA)** **Date:** 09/12/2015 **Stage:** Final **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:** Barry Sharp 07824 334136

Summary: Intervention and Options

RPC Opinion: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2014 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
-£10.27m	-£2.75m	£0.32m	No	NA

What is the problem under consideration? Why is government intervention necessary?

Current public procurement rules, and practices to comply with them, are outdated, burdensome and in need of simplification and modernisation to make the procurement process faster, less costly and enable better value outcomes for government and industry. This IA covers one of three regulatory proposals to reform procurement rules: transposition into UK regulations of the new EU Procurement Directive on Concession Contracts. Government is the only body able to make changes to the rules in the UK, and legislation must be passed to enable these changes.

What are the policy objectives and the intended effects?

The policy objective is simplification of the rules which the public sector and the utilities sector must adhere to when conducting concession procurements, enabling them to make procurements more efficiently. The new Concession Contracts Directive 2014/23/EU is narrow in scope and has some positive impacts as well as some small costs. The new rules will allow the concessions public procurement market to operate more effectively and contribute to stimulating economic growth.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 - Transpose Concession Contracts Directive by the April 2016 deadline set by the Directive. This is the preferred option.

Option 2 - Do nothing. This is not preferred. The Directive requires the rules to be transposed into national legislation. Failure to transpose would leave the UK in breach of its EU obligations and liable to court action and substantial fines. The Directive represents an excellent overall outcome for the UK, which delivers on all of the Government's priority objectives for the negotiations. Having negotiated hard to secure these changes to the rules, it would be perverse not to implement them.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 04/2021

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** None	**Non-traded:** None	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: The Rt Hon Matthew Hancock MP Date: 09/12/2015

Summary: Analysis & Evidence

Policy Option 1

Description: Transpose the Concession Contracts Directive 2014/23/EU by the April 2016 deadline set by the Directive.

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** -£10.27m

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	£0.4m		£1.11m	**£10.27m**

Description and scale of key monetised costs by 'main affected groups'

Concession awarding bodies in the public sector and the utilities sector will be obliged to procure service concessions under the EU procurement rules where the concession has a value equal to or greater than €5.186M. This will impose additional procurement process costs on such bodies and suppliers. Bringing service concessions in scope also makes such contracts subject to the remedies regime for alleged breaches of the rules, which could lead to additional costs in defending challenges.

Other key non-monetised costs by 'main affected groups'

Familiarisation costs for public sector concession awarding bodies are non-monetised. These bodies indicated that they did not expect to incur additional familiarisation costs, and that any familiarisation time needed would be provided as part of on-going, in-house training which is already delivered. Therefore even if, to be conservative, a small amount of familiarisation time was assumed, this and the number of contracts (and therefore bodies) affected would be so small that monetising the cost would not be proportionate.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

Savings delivered for concession awarding bodies through increased competition created by the new rules. The EU concessions market will be opened-up to full EU-wide competition by this new Directive. As a result, improved cross-border access to some concessions opportunities could benefit UK businesses bidding for concession contracts elsewhere in the EU.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The number of public sector service concessions procured in a year is small (26) and is consistent with the number being advertised currently in the Official Journal of the EU. Many service concessions are already open to voluntary EU-wide advertising by public sector concession awarding bodies. Service concessions are not more vulnerable to legal challenge. The number of successful challenges under the existing remedies provisions for public contracts (including works concessions) is low.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs: £0.32m	**Benefits:** £0	**Net:** -£0.32m	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

Description and scale of key monetised costs by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline.

Other key non-monetised costs by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

Description and scale of key monetised benefits by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline.

Other key non-monetised benefits by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	No	NA

Evidence Base

The policy issue and rationale for Government intervention

1. UK public procurement processes are hampered by outdated rules and practices that are burdensome, complex and costly. They are in need of simplification and modernisation to speed-up the process, to enable better value outcomes and to stimulate growth.

2. The European Commission published in 2011 a Green Paper on the modernisation of EU public procurement policy. The Commission's conclusion was that there was an urgent need for a streamlined and flexible set of procurement rules so that Member States can obtain high quality goods and services while delivering value for money for the public purse. The 2004 directives, one for Public Sector Contracts and one for Utilities Contracts, introduced new approaches in an attempt to modernise the rules that existed at that time but experience had shown these added complexity, uncertainty and regulatory burdens. Simplification was needed for the benefit of business and public procurers alike.

3. The Commission came forward with draft proposals for modernisation in late 2011. Following 2 years of intensive negotiation, the European Parliament and the European Council adopted a package of three new directives (Public Sector Contracts, Utilities Contracts, and Concessions Contracts) on 26 February 2014. The UK and other Member States have until April 2016 to implement the new directives in national legislation. The Public Sector Directive was implemented in the UK in February 2015 by The Public Contracts Regulations 2015.

Policy objectives and intended effects

4. The overall policy objective for the UK has been simplification of the rules to free up markets and facilitate growth. This means regulatory easements that make public procurement faster, leaner and smarter, and which cut the costs of the process leading to improved value for money.

5. The new Concession Contracts Directive contains rules that are simpler and more flexible than the other two directives in the package. Where there is commonality with those directives, the rules in the new Directive are substantially the same. This combination of flexibility and consistency with the other rules is beneficial for concession-awarding bodies and suppliers.

6. A concession is a works or services contract where the consideration received by the supplier comprises the right to exploit the concession, or that right together with payment. An example of a service concession might be the right to run a publically-owned leisure centre for a defined period, to bear the costs of doing so and charging the public to use it.

7. The current regime only applies to works concessions procured by public sector concession awarding bodies. These bodies will be subject to the new, lighter touch concessions regime which has been expanded to cover service concessions as well as works concessions. Although this is strictly an increase in the regulation placed upon these bodies, we suspect that many are advertising service concessions even though they are not required to. Feedback received from the public sector during the recently completed public consultation confirmed this view. Concession awarding bodies in that sector advertise concessions on grounds of best practice, to optimise competition in the pursuit of value for money.

8. There are also concession awarding bodies in the utilities sector who are outside the scope of the current regime and will be brought into the new, lighter touch concessions regime for works and service concessions. This is an increase in the regulation placed upon these bodies, although the recently completed public consultation has identified the impact will only be felt in the ports sector.

9. The intended effect of these changes is to inject greater competition into service concession contracts through an EU-wide advertised process. The opening-up of service concessions elsewhere

in the EU may be of benefit to UK suppliers, who will have the potential to compete for new opportunities.

Policy options considered

Option 1 – Transpose by the deadline (preferred option)

10. The preferred option is to transpose the Directive by the April 2016 deadline.

Option 2 – Do nothing

11. The Directive requires the rules to be transposed into national legislation and hence no alternatives to regulation have been considered. Failure to transpose would leave the UK in breach of its EU obligations and liable to court action and substantial fines. The Directive represents an excellent overall outcome for the UK, which delivers on all of the Government's priority objectives for the negotiations. Having negotiated hard to secure these changes to the rules, it would be perverse not to implement them. This option is therefore not preferred.

Policy choices

12. The Directive permits a limited number of choices to be made on whether or how to transpose particular provisions. A number of the choices are also permitted in the Public Sector Directive, another directive in the package, which were the subject of a public consultation in autumn 2014. Following that consultation, decisions on the policy choices were taken for all three Directives in the package and were confirmed in the Government Response to the consultation published in January 2015. There has not been any change to these decisions as a result of the recently completed public consultation on implementing the new Concession Contracts Directive. The decisions maximise simplification and flexibility, avoid gold-plating, and do not go beyond EU minimum requirements. The impact of these policy choice decisions has been assessed in this IA.

Business impact

13. The current EU rules (the 2004 directives) only apply to works concessions procured by concession awarding bodies in the public sector, with a value excluding VAT estimated to be equal to or greater than the threshold of €5.186M (£4.3M) specified in that Public Sector Contracts Directive.

14. The new 2014 Directive applies to procurements of works concessions and service concessions made by concession-awarding bodies in the public and utilities sectors, with a value excluding VAT estimated to be equal to or greater than the threshold of €5.186M (£4.3M) specified in the new Directive.

15. The new Directive therefore increases regulatory requirements on concession awarding bodies in the following key respects:

- Service concessions procured by public sector bodies will now be in scope and subject to the regulated regime, creating additional procurement process costs and additional costs in relation to remedies (monetised); and
- Works concessions and service concessions procured by utilities will now be in scope and subject to the regulated regime, creating familiarisation costs, additional procurement process costs and additional costs in relation to remedies (monetised).

16. The utilities to which the new Directive applies are those in the energy, transport and postal services sectors. The sector comprises public sector bodies and public undertakings (such as Dart Harbour & Navigation Authority) and private sector utilities (such as Associated British Ports).

17. The costs and benefits estimates and assumptions set out in this IA have been put to the test during a public consultation on implementing the new Directive.

18. Business groups such as the CBI and the Business Services Association are supportive of the changes and welcome the benefits they will deliver.

Assumptions

19. The number of works concessions awarded in a year is minimal, 5 or 6 based on historic data. There is no evidence to suggest this number of awards will change as a result of the new rules, or by bringing into scope works concessions procured by utilities sector concession awarding bodies. This view remains unchanged following the public consultation.

20. The number of service concessions awarded in a year is small. Tenders Electronic Daily (TED), the on-line version of the Official Journal of the EU (OJEU) in which contract opportunities are advertised, shows that in the 3 years ended 31 March 2015 there were 78 above-threshold service concessions advertised by UK concession awarding bodies that were in scope of the new rules. No service concessions have been advertised on Contracts Finder in this period, the Government's single platform providing access to public sector procurement related information and documentation on which new tenders and contracts over £10K are published. This demonstrates there is not a substantial number of service concessions being awarded outside of those advertised in OJEU.

21. The number of public sector service concessions we expect to be affected in an average year is therefore based on the average number per year derived from the OJEU data, being 26 (78÷3). Following the public consultation, we continue to believe this is a reasonable estimate.

22. For utilities, the public consultation has shown it is only the ports sector that will be affected by the change that brings service concessions in scope. Ports representing 30% of that sector expect 2 of their service concessions per year to be procured under the new rules, and have said we should assume that will be repeated throughout the rest of the ports sector.

23. The average annual value of a service concession is expected to be around £7.8M. This is an estimate derived from the mean annual value of such contracts as advertised in OJEU in the 3 years ended 31 March 2015, where the concession was above-threshold. Following the public consultation, we continue to believe this represents a reasonable estimate of the average annual value of a service concession.

24. Service concessions are not systematically more vulnerable to legal challenge than works concessions or "ordinary" public contracts, although a challenge does not have to be successful, nor reach court proceedings, for costs to be incurred in defending them. But a successful legal challenge will place a cost burden on the concession-awarding body of some 15% of the concession value. Following the public consultation, we believe this continues to be a reasonable cost estimate other than for ports, who have supplied separate cost estimates for the potential impact on them.

25. Analysis of the annual statistics returns submitted by utilities for 2012 and 2013 shows the proportion of private sector utilities was 57% in 2012 and 63% in 2013. This minor variation between the years reflects small changes in the number of contracts awarded by private sector utilities as a proportion of all public contracts awarded by utilities. Private sector utilities are therefore estimated to comprise 60% of the utilities sector, being the average derived from the statistics returns for these years (57% + 63% ÷ 2). This is the same as that estimated and assumed at consultation stage. Following the public consultation, we believe it is reasonable to continue to assume the private/public split is 60%/40%. It is also assumed this split will remain unchanged in future, as further major privatisation seems unlikely.

Benefits

Those bodies in scope of the current regime– public sector bodies

26. At consultation stage, the benefit to public sector concession awarding bodies was assumed to be savings delivered through increased competition created by the new rules. This would come from bringing service concessions into scope for the first time and making them subject to the same threshold that applies to works concessions. However, the public consultation has suggested that

additional savings may not be delivered in practice because it is current best practice to advertise public sector concessions to optimise competition, even for service concessions where there is not a legal requirement to do so. This potential benefit is therefore non-monetised.

Those bodies outside the scope of the current regime but now in scope of the new regime– utilities bodies

27. At consultation stage, the benefit to utilities sector concession awarding bodies was assumed to be savings delivered through increased competition created by the new rules. This would come from bringing utilities into scope for the first time for both works concessions and service concessions procurements. However, the public consultation has suggested concessions placed by utilities may not generate sufficient cross-border interest to deliver additional savings. For the ports sector in particular, procurements already take place in a competitive market and those operating in the private sector are incentivised to procure on a competitive basis to reduce costs and maximise benefits. This potential benefit is therefore also non-monetised.

Wider benefits

28. The EU concessions market will be opened-up to full EU-wide competition by this new Directive. As a result, improved cross-border access to some concessions opportunities could benefit UK businesses bidding for concession contracts elsewhere in the EU. However, during the public consultation the ports sector commented that there would not be any wider benefits for them. In their view, there would be no noticeable increase in concessions awarded on a cross-border basis in that sector. Other utilities did not comment either way whether or not they envisaged benefits from EU-wide competition.

29. Never the less, studies for the European Commission and the European Investment Bank suggest that between €5bn - €10bn worth of concessions per year in the EU could be opened-up to competition. Another European Commission study suggests that approximately 3.5% by value of contracts is awarded to cross-border suppliers. UK businesses are reported as winning 17% of total EU cross-border contracts.

30. If these figures were realised on service concessions, this suggests potential value to UK businesses of approximately £25M - £50M per year of direct cross-border concession awards which might not otherwise be available.

31. By encouraging more suppliers into the concessions market and increasing competition as a result, the new rules could help to enhance the quality of services offered in competition, but this depends on the extent to which competition is increased in practice. If competition is increased, consumers of these service concessions will benefit as well should concession awarding bodies decide to procure such enhanced services where they offer best value for money.

Costs

Those bodies in scope of the current regime – public sector bodies

32. Works concessions are covered by the current rules and the same €5.186M (£4.3M) threshold. There will not be any additional costs on public sector bodies awarding works concessions as a result of these contracts now falling under the new Directive. This remains our view following public consultation.

33. Bringing service concessions in scope creates costs for public sector concession awarding bodies. These come from two sources. First, from additional procurement process costs. Second, from additional costs caused by more concessions contracts being brought in scope of the current remedies regime, where suppliers challenge decisions taken during the procurement process or seek legal redress for alleged failure to comply with the rules in individual procurements.

34. At consultation stage, we thought it likely that there would be some small familiarisation costs for bodies in scope of the current regime. Public sector respondents to the consultation have told us they

do not expect to incur additional familiarisation costs as a result of this change. The current regime applies to them for works concessions, and service concessions are advertised on grounds of best practice to optimise competition. But to the extent any familiarisation is required, given the small number of contracts involved, it would be provided as part of ongoing, multi-subject, continuous professional awareness sessions delivered in-house. Therefore given that any necessary familiarisation time and the number of contracts involved are both small, and that these costs only affect public sector bodies, it would not be proportionate to seek to monetise these costs.

Those bodies outside the scope of the current regime but now in scope of the new regime – utilities bodies

35. Works concessions procured by utilities sector concession awarding bodies are not covered by the current rules. There is no evidence to suggest there is any appreciable number of works concessions being awarded by such bodies. We therefore estimate that bringing them into scope will not cause any additional costs on utilities sector concession awarding bodies. This remains our view following public consultation.

36. Service concessions procured by utilities sector concession awarding bodies are also not covered by the current rules. Bringing them in scope creates costs for such bodies. These come from the same two sources as for public sector concession awarding bodies. First, from additional procurement process costs. Second, from additional costs caused by such concession contracts being brought in scope of the current remedies regime, where suppliers challenge decisions taken during the procurement process or seek legal redress for alleged failure to comply with the rules in individual procurements. There are also familiarisation costs in the ports sector to prepare for the changes.

37. Other utilities have told us they do not expect to award concession contracts and will not, therefore, incur familiarisation, procurement or legal challenge costs.

Private Sector 'bidders'

38. The new rules do not regulate bidders and they do not, therefore, have public procurement processes that need to be adapted to implement and comply with the changes. Nor will bidders incur familiarisation costs. Bidders typically focus on the requirements for a contract opportunity as set out in the contract notice or invitation to tender and respond to the opportunity in accordance with those requirements. This forms part of the costs of bidding. These costs are already incurred by bidders under the current regime in respect of works concessions for public sector concession awarding bodies. The costs of bidding for service concessions under a regulated regime, which will now be in scope, are monetised in this IA (paragraphs 44 and 45).

39. At consultation stage, we estimated that greater competition for concessions contracts through an EU-wide advertised process could have a knock on impact on the private sector suppliers who bid for such contracts. We thought concession awarding bodies would be able to improve the competitive aspects of the concession awarding process, for example by maximising competitive pressures leading to lower prices tendered by bidders. This would have a knock on impact on bidders who would likely see a reduction in their profits/benefits from bidding for concession contracts.

40. Following the public consultation, we now estimate there will be no benefit to concession awarding bodies from savings delivered through increased competition created by the new rules. Consequently, bidders will not see a reduction in their profits/benefits as a result of this change and this cost is therefore non-monetised. In the unlikely event of an impact in individual cases, any reduction in profits for bidders would coincide with lower prices for concession awarding bodies.

41. The estimates that follow are our best estimates following the public consultation.

<u>Familiarisation Costs – direct</u>

42. Ports representing 30% of the ports sector estimate they will incur £120K in non-recurring familiarisation, contract audit and training costs to prepare for the changes. They have said we should assume that level of cost will be repeated throughout the rest of the ports sector.

Extrapolating this to the whole of the ports sector, the familiarisation cost for ports is therefore £0.4M (£120K x 3.33).

43. For utilities, the public consultation has shown it is only the ports sector that will be affected by the change that brings works and service concessions in scope. Similarly, the consultation with public sector respondents indicated that they would not incur any additional familiarisation costs, and if, to be conservative, a small amount of familiarisation time was assumed, this would be so small that monetising it would not be proportionate (see paragraph 38). Private sector bidders are not regulated by these rules. There will therefore not be familiarisation costs for other utilities, for public sector concession awarding bodies (any small familiarisation time is non-monetised), or for private sector bidders.

Additional Procurement Process Costs – direct

44. The costs of running concessions procurements will apply to any properly undertaken procurement exercise, whether or not subject to specific EU rules. The net cost of running a rules-compliant public procurement exercise compared with a simple "sub-threshold" (largely rules exempt) public contract has been calculated by European Commission studies as being on average 0.2% of contract value for contract awarding bodies and suppliers combined. These costs are incurred across all stages of the procurement cycle; from developing and issuing the invitation to bid and completing a contract notice for publication in OJEU, to developing and submitting bids and evaluating them, to awarding the contract and completing a contract award notice for publication in OJEU.

45. Additional procurement process costs caused by bringing service concessions in scope of the regulated regime are therefore estimated to be £0.41M per year (26 contracts x £7.8M average value of contract x 0.2%) for UK public sector concession awarding bodies, other than those in the ports sector. As the European Commission studies estimated increased costs of 0.2% of contract value for both contract awarding bodies and suppliers combined, we assume the increased costs of bidding for service concessions are included in this figure.

46. As stated earlier in this IA, following public consultation there is an additional number of service concessions impacted by this change in the ports sector. For the 2 contracts per year estimated by ports representing 30% of that sector, additional procurement process costs of £69K per year have been estimated by those ports, including legal support and annual training. They have said we should assume that level of cost will be repeated throughout the rest of the ports sector. We therefore estimate these additional procurement process costs to be £0.23M per year (£69K x 3.33). As the consultation showed that other utilities will not be affected by the change, it is not expected that these utilities will face any further procurement costs.

Additional Costs of Remedies Provisions – direct

47. The new Directive also makes above threshold service concessions subject to the remedies provisions, which could lead to suppliers challenging decisions taken during the procurement process, procurements being restarted or settlements being agreed, or ultimately to challenges before the courts and possible requirements to terminate a procurement. The cost will depend entirely on the number of challenges, the value and nature of such concessions which are subject to a challenge, and the success rate of the challenges which are brought. This depends both on suppliers' willingness to mount challenges, and the extent to which UK concession-awarding bodies comply with the rules.

48. Although there are no collated figures available on the number of challenges being brought, anecdotal evidence suggests that the number of successful challenges under the existing remedies provisions for public contracts (including works concessions) is low. On this basis, it is estimated there will be no more than one successful challenge to a service concession in the public sector every 5 years. This remains our view following public consultation. Such challenges will involve legal fees, a re-procurement process, and costs of damages (loss of profit) and delays estimated to total 15% of the concession value.

49. Additional costs to the public sector associated with the remedies provisions are therefore estimated to be £2.34M total in the 10 year period covered by this IA (2 successful challenges x £7.8M average concession value x 15%). This equates to £0.23M per year on average (undiscounted). We assume the challenges would take place in the 1st and 6th years of the 10 year period and that all associated legal costs fall within these years (i.e. of the £2.34M total (undiscounted) cost over 10 years, £1.17M falls in year 1, with a further £1.17M in year 6). As it is difficult to predict when legal challenges would occur and how costs would fall over time, an alternative approach would have been to assume costs were spread evenly across the 10 years. The chosen approach was preferred as it gives a more conservative NPV estimate (because costs occur earlier), although effects on the NPV of varying this assumption are minimal (below £0.2M).

50. As stated earlier in this IA, following public consultation there is an additional number of service concessions impacted by this change in the ports sector. Ports representing 30% of that sector estimate there will be at least one substantial challenge every 5 years, involving legal fees to defend the challenge. Amortising the estimated costs over the 10 year period covered by the IA, those ports estimate the costs to be £72K per year on average. Assuming that level of cost will be repeated throughout the rest of the ports sector, we estimate these additional costs in defending challenges to be £0.24M per year on average (£72K x 3.33). Again, we assume the challenges would take place in the 1st and 6th years of the 10 year period and that all associated legal costs fall within these years (i.e. of the £2.4M total (undiscounted) cost over 10 years, £1.2M falls in year 1, with a further £1.2M in year 6). As in paragraph 49 this approach was preferred as it gives a more conservative NPV estimate than assuming costs are spread equally across years.

51. As with previous costs, other utilities and private sector bidders are not expected to incur these costs. It is assumed that private sector bidders will only make a legal challenge if they expect to make a net profit from doing so, thus the costs to private sector bidders of making a legal challenge have not been monetised.

Impact on public and private sectors combined

52. The net present cost is estimated at £10.27M, discounted at 3.5% a year over 10 years, as summarised in the following table:

Change	Transition Cost £M	Monetised Average Annual Cost £M	Monetised Average Annual Benefit £M	Net Annual Cost £M
Familiarisation costs – ports utilities, direct (paragraph 42)	0.4	N/A	N/A	N/A
Additional procurement process costs – public sector, ports utilities and suppliers, direct (paragraphs 45 and 46)	N/A	0.64	N/A	0.64
Additional costs of remedies provisions - public sector and ports utilities, direct (paragraphs 49 and 50)	N/A	0.47	N/A	0.47
Total costs and benefits	**0.4**	**1.11**	**Nil**	**1.11**
		Total Present Cost £M	**Total Present Benefit £M**	**Net Present Value £M**
Total costs and benefits, discounted over 10 years		**10.27**	**Nil**	**-10.27**

Impact on businesses

53. The Directive applies to concession awarding bodies in the public sector and the utilities sector. We estimate that 60% of utilities are in the private sector (paragraph 25).

54. Familiarisation costs fall in the ports sector, to which the same private/public split of 60%/40% is assumed to apply. Transition costs to business are £0.24M (£0.4M x 0.6).

55. Additional procurement process costs for the 26 service concessions per year in scope of the regulated regime (paragraph 45) are estimated to fall in the public sector, as are the additional costs caused by the remedies provisions for the 2 successful challenges in the 10 year period (paragraph 49).

56. The private/public split of 60%/40% is assumed to apply to the additional procurement process costs in the ports sector for the service concessions which are now in scope of the regulated regime (paragraph 46), and to the costs of defending legal challenges in the ports sector (paragraph 50). The annual business cost of these changes is £0.28M (£0.23M + £0.24M x 0.6).

57. The net cost to business per year (equivalent annual net cost to business in 2014 prices) is estimated at **£0.32M** using the BRE online impact assessment calculator and the above cost figures.

58. The business NPV over 10 years is therefore -£2.75M.

59. As this is an EU Directive it is not in scope of one-in three-out.